



House of Representatives

File No. 556

General Assembly

February Session, 2012

(Reprint of File No. 268)

Substitute House Bill No. 5554
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 19, 2012

AN ACT CONCERNING HABEAS CORPUS REFORM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 52-470 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2012, and*
3 *applicable to petitions filed on or after said date*):

4 (a) The court or judge hearing any habeas corpus shall proceed in a
5 summary way to determine the facts and issues of the case, by hearing
6 the testimony and arguments [therein] in the case, and shall inquire
7 fully into the cause of imprisonment [, and shall] and thereupon
8 dispose of the case as law and justice require.

9 (b) (1) After the close of all pleadings in a habeas corpus proceeding,
10 the court, upon the motion of any party or, on its own motion upon
11 notice to the parties, shall determine whether there is good cause for
12 trial for all or part of the petition.

13 (2) With respect to the determination of such good cause, each party
14 may submit exhibits including, but not limited to, documentary

15 evidence, affidavits and unsworn statements. Upon the motion of any
16 party and a finding by the court that such party would be prejudiced
17 by the disclosure of the exhibits at that stage of the proceedings, the
18 court may consider some or all of the exhibits in camera.

19 (3) In order to establish such good cause, the petition and exhibits
20 must (A) allege the existence of specific facts which, if proven, would
21 entitle the petitioner to relief under applicable law, and (B) provide a
22 factual basis upon which the court can conclude that evidence in
23 support of the alleged facts exists and will be presented at trial,
24 provided the court makes no finding that such evidence is
25 contradicted by judicially noticeable facts. If the petition and exhibits
26 do not establish such good cause, the court shall hold a preliminary
27 hearing to determine whether such good cause exists. If, after
28 considering any evidence or argument by the parties at such
29 preliminary hearing, the court finds there is not good cause for trial,
30 the court shall dismiss all or part of the petition, as applicable.

31 (c) Except as provided in subsection (d) of this section, there shall be
32 a rebuttable presumption that the filing of a petition challenging a
33 judgment of conviction has been delayed without good cause if such
34 petition is filed after the later of the following: (1) Five years after the
35 date on which the judgment of conviction is deemed to be a final
36 judgment due to the conclusion of appellate review or the expiration of
37 the time for seeking such review; (2) October 1, 2017; or (3) two years
38 after the date on which the constitutional or statutory right asserted in
39 the petition was initially recognized and made retroactive pursuant to
40 a decision of the Supreme Court or Appellate Court of this state or the
41 Supreme Court of the United States or by the enactment of any public
42 or special act. The time periods set forth in this subsection shall not be
43 tolled during the pendency of any other petition challenging the same
44 conviction.

45 (d) In the case of a petition filed subsequent to a judgment on a prior
46 petition challenging the same conviction, there shall be a rebuttable
47 presumption that the filing of the subsequent petition has been

48 delayed without good cause if such petition is filed after the later of
49 the following: (1) Two years after the date on which the judgment in
50 the prior petition is deemed to be a final judgment due to the
51 conclusion of appellate review or the expiration of the time for seeking
52 such review; (2) October 1, 2014; or (3) two years after the date on
53 which the constitutional or statutory right asserted in the petition was
54 initially recognized and made retroactive pursuant to a decision of the
55 Supreme Court or Appellate Court of this state or the Supreme Court
56 of the United States or by the enactment of any public or special act.
57 For the purposes of this section, the withdrawal of a prior petition
58 challenging the same conviction shall not constitute a judgment. The
59 time periods set forth in this subsection shall not be tolled during the
60 pendency of any other petition challenging the same conviction.
61 Nothing in this subsection shall create or enlarge the right of the
62 petitioner to file a subsequent petition under applicable law.

63 (e) In a case in which the rebuttable presumption of delay under
64 subsection (c) or (d) of this section applies, the court, upon the request
65 of the respondent, shall issue an order to show cause why the petition
66 should be permitted to proceed. The petitioner or, if applicable, the
67 petitioner's counsel, shall have a meaningful opportunity to investigate
68 the basis for the delay and respond to the order. If, after such
69 opportunity, the court finds that the petitioner has not demonstrated
70 good cause for the delay, the court shall dismiss the petition. For the
71 purposes of this subsection, good cause includes, but is not limited to,
72 the discovery of new evidence which materially affects the merits of
73 the case and which could not have been discovered by the exercise of
74 due diligence in time to meet the requirements of subsection (c) or (d)
75 of this section.

76 (f) Subsections (b) to (e), inclusive, of this section shall not apply to
77 (1) a claim asserting actual innocence, (2) a petition filed to challenge
78 the conditions of confinement, or (3) a petition filed to challenge a
79 conviction for a capital felony for which a sentence of death is imposed
80 under section 53a-46a.

81 [(b)] (g) No appeal from the judgment rendered in a habeas corpus
82 proceeding brought by or on behalf of a person who has been
83 convicted of a crime in order to obtain such person's release may be
84 taken unless the appellant, within ten days after the case is decided,
85 petitions the judge before whom the case was tried or, if such judge is
86 unavailable, a judge of the Superior Court designated by the Chief
87 Court Administrator, to certify that a question is involved in the
88 decision which ought to be reviewed by the court having jurisdiction
89 and the judge so certifies.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect
Pub. Defender Serv. Com.	GF - Potential Impact
Criminal Justice, Div.	GF - Potential Savings
Judicial Dept.	GF - Potential Savings

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill places certain restrictions on habeas corpus petitions including requiring the court to find good cause to proceed to trial and creating a five-year post appellate review period in which habeas petitions must be made. While it is anticipated these restrictions may result in savings, there is also a potential initial cost to the Public Defender Services Commission (PDS) as a result of an increase in habeas petitions.

The bill requires the court to find good cause to proceed to trial on a habeas petition. By adding this restriction, the bill could result in savings to the Division of Criminal Justice (DCJ) and to the Judicial Department by eliminating the potential for frivolous or non-merit petitions going to trial.

The net impact of the bill on the PDS in FY 13 is uncertain because it is unclear whether the number of habeas petitions would increase or decrease. There is a potential of:

- 1) An increase in Habeas Unit costs due to an influx of petitions resulting from the reduction in time to file,

- 2) A reduction in petitions due to the requirement that the court find good cause for the petition to go forward. Currently the PDS receives approximately 350 new cases each year, some of which may not receive a good cause finding.

It is unclear at this time which provision would have a greater impact on the number of habeas petitions handled by the PDS.

House "A" struck the language of the underlying bill and the associated fiscal impact. The amendment resulted in the same impact as the underlying bill and makes additional changes that do not result in a fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation. The bill results in significant out year savings, beginning in FY 14, to the PDS, the DCJ, and the Judicial Department by reducing the number of non-merit cases that must be litigated.

OLR Bill Analysis**sHB 5554 (as amended by House "A")******AN ACT CONCERNING HABEAS CORPUS REFORM.*****SUMMARY:**

Regarding habeas corpus petitions, this bill:

1. requires the court, on its own or if asked by a party, to determine if there is good cause to proceed to trial on the petition and
2. for a petition related to a criminal conviction, creates a rebuttable presumption that a petition filed after certain dates was delayed without good cause and requires the court to dismiss it if the petitioner does not establish good cause for the delay.

The bill's provisions do not apply to petitions (1) claiming actual innocence, (2) challenging prison conditions, or (3) challenging a capital felony conviction that resulted in a death sentence.

Current statutes and court rules do not limit the filing of habeas petitions. Grounds for a court to dismiss a habeas petition include presenting the same grounds as a prior petition previously denied and failing to state new facts or offer new evidence not reasonably available at the time of the prior petition (Practice Book §§ 23-29 and 25-42).

*House Amendment "A" (1) allows the court to look at any party's exhibit, not just the petitioner's, in private when determining good cause for a petition to proceed and (2) makes technical changes.

EFFECTIVE DATE: October 1, 2012 and applicable to petitions filed on or after that date.

GOOD CAUSE TO PROCEED TO TRIAL

For any type of habeas petition except those excluded as specified above, the bill requires the court to determine whether there is good cause for some or all of the petition's allegations to proceed to trial if, after the pleading, (1) a party requests it or (2) the court notifies the parties of its intention to make such a determination.

The bill allows the parties to submit exhibits such as documentary evidence, affidavits, and unsworn statements. The court can look at an exhibit *in camera* (in private) if a party (1) requests it and (2) would be prejudiced by disclosure at that stage of the proceeding.

The court can determine good cause based on the petition and exhibits if they:

1. allege specific facts that, if proven, would entitle the petitioner to relief and
2. provide a factual basis to conclude that evidence supporting the facts exists and will be presented at trial, as long as the court does not make a finding that the evidence is contradicted by judicially noticeable facts (generally, facts that the court can accept without requiring proof because they are generally known).

If the petition and exhibits do not establish good cause, the bill requires the court to hold a preliminary hearing. It must dismiss all or part of a petition after the hearing if it does not find good cause after considering the parties' evidence and arguments.

REBUTTABLE PRESUMPTION OF DELAY

The bill creates two rebuttable presumptions of delay in filing habeas petitions challenging a criminal conviction other than claims of actual innocence or capital convictions resulting in a death sentence;

one for initial petitions and another for subsequent petitions. If either presumption applies, the petitioner must have an opportunity to show good cause for the delay before the court dismisses the petition.

Initial Petition

The bill creates a rebuttable presumption that a petition was delayed without good cause if it is filed after the later of:

1. five years after appellate review of the conviction concludes or the time for review expires;
2. October 1, 2017; or
3. two years after a constitutional or statutory right asserted in the petition was initially recognized and made retroactive by the U.S. Supreme Court, the Connecticut Supreme or Appellate Court, or a public or special act.

The bill's time periods are not tolled by another pending petition challenging the same conviction.

Subsequent Petition

The bill creates a rebuttable presumption that a subsequent petition challenging the same conviction was delayed without good cause if it is filed after the later of:

1. two years after the date appellate review of the prior petition concluded or the period for review expired;
2. October 1, 2014; or
3. two years after the date a constitutional or statutory right asserted in the petition was initially recognized and made retroactive by the U.S. Supreme Court, the Connecticut Supreme or Appellate Court, or a public or special act.

These provisions do not apply if the prior petition was withdrawn.

The bill's time periods are not tolled by another pending petition challenging the same conviction.

The bill specifies that these provisions do not create or enlarge a petitioner's right to file subsequent petitions.

Hearing

If a rebuttable presumption of delay applies, the respondent can request that and the bill requires the court to order the petitioner to show cause why the petition should proceed. The petitioner or his or her counsel must have a meaningful opportunity to investigate the basis for the delay and respond to the order. The court must dismiss the petition if it does not find good cause for the delay.

Under the bill, good cause for this purpose includes the discovery of new evidence that materially affects the merits of the case that could not have been discovered by due diligence in the required timeframes.

BACKGROUND

Habeas Corpus

Habeas corpus is a civil action that allows a petitioner to challenge the legality of certain actions. For example, a habeas petition can be filed by a:

1. prisoner to challenge the legality of his or her conviction and confinement or the constitutionality of his or her prison conditions,
2. person confined in a hospital for psychiatric disabilities to challenge the legality of his or her confinement,
3. person subject to involuntary representation by a conservator to challenge the legality of the involuntary representation, or
4. person to challenge child custody or visitation orders.

The Connecticut Constitution prohibits suspending the privileges of the writ of habeas corpus unless the legislature does so because public

safety requires it due to a rebellion or invasion (Art. I, § 12). Similarly, the U.S. Constitution prohibits suspending the privilege of the writ of habeas corpus except when public safety requires it due to rebellion or invasion (Art. I, § 9).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (04/02/2012)